

AMENDED IN ASSEMBLY JULY 1, 2003

AMENDED IN SENATE MAY 15, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MAY 6, 2003

SENATE BILL

No. 122

Introduced by Senator Escutia

February 4, 2003

An act to add ~~Section~~ *Sections 17204.6, 17204.7, 17204.8, and 17204.9* to the Business and Professions Code, relating to unfair competition.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Escutia. Private enforcement actions.

Existing law provides remedies for unfair competition that may be enforced by a governmental agency, including the district attorney, or by a private party acting for the interests of itself, its members, or the general public.

This bill would require, subject to specified exceptions, the court to review and approve attorney's fees in ~~a proposed settlement, compromise, dismissal, or disposition~~ of an unfair competition action brought *or proposed to be brought* by a private party on behalf of the general public. The bill would also *require that the plaintiff in those actions submit a copy of the complaint to the Judicial Council of California. The bill would specify disgorgement as an available remedy for acts of certain equitable remedies applicable to all* unfair competition *actions* and would set forth principles for joining these

actions. The bill would make its provisions contingent upon AB 95 being enacted and becoming effective on or before January 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17204.6 is added to the Business and
2 Professions Code, to read:

3 ~~17204.6. (a) In a private action for relief brought on behalf of~~
4 ~~the general public, a court shall review attorney's fees in a~~
5 ~~proposed settlement, compromise, dismissal, or disposition on the~~
6 ~~merits of an action brought pursuant to this chapter and shall~~
7 ~~approve the fees for payment if they are consistent with applicable~~
8 ~~law. Any~~

9 17204.6. (a) (1) A court shall review any attorney's fees
10 proposed to be paid in connection with a private action or a private
11 cause of action brought, or proposed to be brought, under this
12 chapter on behalf of the general public. The request to review and
13 approve the fees shall be made upon noticed motion. The court
14 shall approve an award of attorney's fees for a plaintiff who
15 prevails in the action against one or more defendants if an award
16 of attorney's fees is authorized by a statute or if the award satisfies
17 the requirements of Section 1021.5 of the Code of Civil Procedure.

18 (2) (A) When any attorney's fees are proposed to be paid in
19 compromise or settlement of a private action or a private cause of
20 action proposed to be brought under this chapter on behalf of the
21 general public that has not been filed with the court, the potential
22 plaintiff shall file and serve on all parties the following:

23 (i) A complaint titled "Complaint re: Settlement of an Action
24 under Section 17200 of the Business and Professions Code"
25 describing the cause of action proposed to be brought under this
26 chapter.

27 (ii) A special motion for review and approval of the proposed
28 fees.

29 (B) A potential defendant who is a party to the compromise or
30 settlement is not required to file an answer to the complaint but
31 may file a response to the special motion upon payment of a filing
32 fee pursuant to Section 26830 of the Government Code.

1 (C) Upon hearing the motion, the court shall approve an award
2 of attorney's fees to the potential plaintiff against one or more of
3 the potential defendants if an award of attorney's fees is authorized
4 by a statute or if the award satisfies the requirements of Section
5 1021.5 of the Code of Civil Procedure.

6 (3) No attorney's fees may be paid by a defendant or a potential
7 defendant in compromise or settlement of an action or proposed
8 action brought on behalf of the public under this chapter unless the
9 fees have been reviewed and approved pursuant to a motion under
10 paragraph (1) or (2). If not approved by the court, an agreement
11 to pay any attorney's fees is void and unenforceable.

12 (4) The plaintiff or the potential plaintiff is not required to
13 submit information to support the award of attorney's fees
14 pursuant to this section if the information is protected by the
15 attorney-client or attorney work product privilege.

16 (5) An attorney who ~~fails to submit~~ receives attorney's fees in
17 an action or proposed action under this chapter without submitting
18 the proposed attorney's fees for review and approval by the court
19 pursuant to paragraph (1) or (2) is subject to disciplinary action
20 by the State Bar of California.

21 (b) At the time of filing a private cause of action under this
22 chapter on behalf of the general public, the plaintiff shall notify
23 and submit a copy of the complaint to the Judicial Council of
24 California.

25 (c) Subdivision (a) shall not ~~apply to a lawsuit~~ require a court
26 to review an award of attorney's fees if the fees are agreed upon by
27 the parties as part of the compromise or settlement of an action or
28 proposed action brought by a labor organization or by a
29 representative of a labor organization or by a joint labor
30 management committee established pursuant to the federal Labor
31 Management Corporation Act of 1978 (29 U.S.C. Sec. 175a) or by
32 an established employment or civil rights organization on behalf
33 of employees or the general public. For purposes of this section,
34 an employment or civil rights organization shall be in existence for
35 a minimum of five years in order to qualify for an exemption and
36 have as one of its purposes the vindication of labor, civil,
37 constitutional or human rights.

38 ~~(e) Disgorgement relief is an available remedy under Section~~
39 ~~17203. A court shall assure that any disgorgement relief in excess~~
40 ~~of any restitution paid by a defendant shall be distributed as a fluid~~

1 ~~recovery or cy pres award, to the extent possible, in a manner~~
2 ~~designed either to further the purposes of the underlying causes of~~
3 ~~action or to promote justice for all Californians.~~

4 ~~(d) (1)~~

5 SEC. 2. Section 17204.7 is added to the Business and
6 Professions Code, to read:

7 17204.7. (a) In addition to the relief authorized by Section
8 17203, if the court finds that a defendant has engaged in an
9 unlawful, unfair, or fraudulent business act or practice in violation
10 of this chapter and that the defendant has derived profits or ill
11 gotten gains from that act or practice, the court may order any
12 appropriate equitable relief to remedy the act or practice. A court
13 shall assure that any monetary relief in excess of the restitution
14 paid by a defendant shall be distributed as a fluid recovery or cy
15 pres award pursuant to this section.

16 (b) Prior to the entry of any judgment or order for relief
17 pursuant to this section, the court shall determine the total amount
18 of monetary relief payable as the result of the defendant's unlawful,
19 unfair, or fraudulent business act or practice. The court shall set
20 a date when the parties shall report to the court the total amount
21 actually paid in restitution to members of the public. After the
22 report is received, the court shall amend the judgment to direct the
23 defendant to pay the sum of the unpaid residue to nonprofit
24 organizations or foundations to support projects consistent with
25 the objectives and purposes of the underlying action or to promote
26 justice for all. The court shall ensure that this distribution provide
27 substantial benefit to California consumers.

28 SEC. 3. Section 17204.8 is added to the Business and
29 Professions Code, to read:

30 17204.8. (a) All persons may be joined in one action as
31 defendants if there is asserted against them:

32 ~~(A)~~

33 (1) Any right to relief jointly, severally, or in the alternative, in
34 respect of or arising out of the same transaction, occurrence, or
35 series of transactions or occurrences and if any question of law or
36 fact common to all these persons will arise in the action; or

37 ~~(B)~~

38 (2) A claim, right, or interest adverse to them in the property or
39 controversy which is the subject of the action.

40 ~~(2)~~

(b) It is not necessary that each defendant be interested as to every cause of action or as to all relief prayed for. Judgment may be given against one or more defendants according to their respective liabilities.

~~(3)~~

(c) Where the plaintiff is in doubt as to the person from whom he or she is entitled to redress, he or she may join two or more defendants, with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties.

~~(4)~~

(d) The fact that individual defendants who are not associates or affiliates of each other are engaged in the same or similar *types of businesses* and are alleged to have violated the same or similar laws or regulations shall not, in itself, constitute a basis for joinder under this chapter.

~~SEC. 2.~~

SEC. 4. Section 17204.9 is added to the Business and Professions Code, to read:

17204.9. A court in reviewing an action brought pursuant to this chapter may, in the interests of justice, order consolidation or coordination of actions.

SEC. 5. The provisions of paragraph (4) of subdivision (d) of Section 17204.6 17204.8 of the Business and Professions Code added by this act do not constitute a change in, but are declaratory of, existing law.

~~SEC. 3.~~

SEC. 6. This act shall become operative only if Assembly Bill 95 of the 2003–04 Regular Session is enacted and becomes effective on or before January 1, 2004.